

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31869 of 2014

Arising Out of PS.Case No. -938 Year- 2013 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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1. Nirmala Devi, W/o Abhay Kumar Singh
2. Jawahar Singh, S/o Abhay Kumar Singh
3. Tripurari Singh, S/o Abhay Kumar Singh
4. Sunil Singh @ Sunil Kumar Singh, S/o Abhay Kumar Singh
5. Sujit Singh @ Sujit Kumar Singh, S/o Abhay Kumar Singh
6. Kailash Prasad Singh, S/o Late Yamuna Prasad Singh
All Resident of Village Sarkatiya, P.S. Sangrampur, District Munger.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Subodh Singh, S/o Late Maheshwar Prasad Singh, Resident of Village Sarkatiya,
P.S. Sangrampur, District Munger.

.... Opposite Party/s

with

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Criminal Miscellaneous No. 32377 of 2014

Arising Out of PS.Case No. -938 Year- 2013 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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1. Pramod Singh, Son of late Sahdeo Prasad Singh
2. Rakesh Kumar Singh, Son of Pramod Singh
Both resident of village - Sarkatiya , P.S. Sangrampur , District - Munger

.... Petitioner/s

Versus

1. The State of Bihar.
2. Subodh Singh, S/o Late Maheshwar Prasad Singh, resident of village -
Sarkatiya , P.S. Sangrampur , District - Munger

.... Opposite Party/s



Appearance :

(In Cr.Misc. No.31869 of 2014)

For the Petitioner/s : Mr. Rakesh Kumar Sinha, Adv.

For the Opposite Party no.1: Mrs. Pronati Singh, APP

For the Opposite Party no.2 : Mr. Kamal Kishore Jha, Adv.

(In Cr.Misc. No.32377 of 2014)

For the Petitioner/s : Mr. Rakesh Kumar Sinha, Adv.

For the Opposite Party no.1 : Mr. Ashraf Ansari, APP

For the Opposite Party no.2 : Mr. Kamal Kishore Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 13-10-2017

Heard learned counsel for the parties.

2. With the consent of the parties, both the matters have been heard together and are being disposed of by this common judgment.

Cr.Misc.No.31869 of 2014

3. In this application petitioner no.1 is the purchaser of the land bearing Khata No.163, Khesra No.427 measuring area 16 decimals in Mauza Sarkatiya vide registered sale deed dated 05.11.2003 executed by Pramod Singh and Rakesh Kumar Singh, son of Pramod Singh who are descendants of the common ancestor and Khatiyani Raiyat late Durga Singh. Petitioner nos.2, 3, 4 and 5 are sons of the petitioner no.1, whereas petitioner no.6 is brother of petitioner no.1. According to the petitioners, Pramod Singh and Rakesh Kumar Singh (accused nos.1 and 2 and petitioners in Cr.Misc.No.32377 of 2014) and the complainant-opposite party no.2 are co-agnate and descendants of Khatiyani Raiyat late Durga Singh.



Khata No.163 belongs to both of them.

4. A Complaint Case No.938C of 2013 (Annexure-1 to the present application) came to be filed on 21.09.2013 by the opposite party no.2. He alleged in the complaint petition that a community hall was constructed on the land in question in the year 1958 which was reconstructed in the year 1997-98 from scheme's fund of the Government of Bihar. The allegation is that the accused nos. 1 and 2 under a conspiracy executed a registered sale deed in favour of accused no.3 Nirmala Devi (petitioner no.1) and on getting knowledge of this his villager Manoj Kumar Singh and others submitted an application dated 30.05.2012 in the office of the Circle Officer, Sangrampur. It is further stated that the Circle Officer, Sangrampur, after hearing referred the matter to the Deputy Collector Land Reforms, Tarapur where the matter is being heard. He claims that on getting a certified copy of the registered sale deed bearing no.4997 executed by accused nos.1 and 2 in favour of Nirmala Devi, the complainant came to know that the document has been created by fraudulent act in conspiracy to usurp the land on which the community hall is standing. It is further alleged that on 20.09.2013 at about 10.00 am all the accused persons came lashed with arms, spade and Khanti on the land of the community hall and they started laying down foundation for erection of a boundary wall. The complainant



claims that he protested this act of the accused, on which accused Jawahar Singh and Tripurari Kumar Singh started abusing the complainant-opposite party no.2 who asked them not to abuse him, thereafter it is alleged that the accused nos.5, 6 and 7 (petitioner nos.2, 3 and 4 respectively in the present application) started beating the complainant by fists and blow. On hulla, the witnesses assembled from the village then accused nos. 5 and 6 fired in the sky from the pistol in their hands. It is then alleged that the accused no.3 (petitioner no.1) took out a sum of Rs.500/- from his pocket and accused no.4 snatched the watch of the complainant-opposite party no.2. The complainant further stated that information was sent to the police officer, but the police officer told the opposite party no.2 that it is a matter relating to land, therefore a case should be filed in the court. This is the reason for filing of the complaint one day after the alleged occurrence.

5. In course of his solemn affirmation before the learned Magistrate the complainant claims that a judgment has already been rendered by the Deputy Collector Land Reforms, Tarapur pursuant to the application submitted before the Circle Officer. On query made by the learned Magistrate the complainant stated that copy of the judgment shall be filed. The complainant produced two witnesses in support of his case who supported the version of the complainant.



6. Learned counsel for the petitioners submits that from perusal of the complaint petition, it would appear that the complainant had purposely not disclosed the date of execution and registration of the sale deed executed by the accused nos.1 and 2 in favour of accused no.3 (petitioner no.1). He submits that the sale deed in question was executed by the legal heirs of the Khatiyani Raiyat Durga Singh on 05.11.2003 and it is evident from the order dated 17.07.2012 passed by the Circle Officer, Sangrampur that after purchasing the land the petitioner no.1 got her name mutated and a Jamabandi No.65 came to be created in favour of the petitioner no.1. It has also come in the order dated 17.07.2012 which is part of Annexure-4 to the present application and is an uncontroverted and unimpeachable document that the rent receipts were being issued in favour of petitioner no.1 and since date of purchase (05.11.2003) till filing of the petition giving rise to the present dispute on 30.5.2012, there was no dispute at all in respect of this purchase. The order further says that it is only when the purchasers started putting a boundary wall, common petition came from the villagers.

7. Learned counsel further referring to Annexure-4 submits that the Circle Officer inspected the spot, verified the facts regarding the claim of common petition that the land in question was donated by ancestor of the vendors of petitioner no.1 and then found



that there was no such deed of gift in favour of the Hon'ble Governor. In course of enquiry into the allegations, Circle Officer also found that although the officer of the Bhudan Yagna Committee had issued a letter dated 23.06.2012 certifying that the entire land measuring area 83 decimals of the said plot was donated by one Sri Kant Jha and Brij Lal Jha to Bhudan, but the Circle Officer pointed out in his order that Sri Kant Jha and Brij Lal Jha are no way related to the Khatiyani Raiyat. Therefore, there is a kind of question raised by the Circle Officer on the locus standi of the persons allegedly mentioned in the certificate of Bhudan Yagna Committee saying that they had executed the gift deed.

8. Learned counsel for the petitioners submits that after the matter was referred to the Deputy Collector Land Reforms, the parties were heard and Deputy Collector Land Reforms passed an order dated 18.10.2013 wherein he has taken note of the letter no.1617 dated 23.09.2013 received from the District Sub-Registrar, Munger (Annexure-6 to the present application) certifying that no reference of writing any document by Deep Narayan Singh in respect of the land in question could be found in the Registry Office. Let it be mentioned that Deep Narayan Singh is non-else but the son of the Khatiyani Raiyat Durga Singh and grandfather of accused no.1 who is one of the executants of the sale deed. The order of the Deputy



Collector Land Reforms which has been referred in the solemn affirmation by the complainant is also placed on the record as Annexure-5 to the present application. The order clearly shows that enquiry in the allegation regarding execution of gift deed by Deep Narayan Singh, son of Durga Singh in respect of the present land in favour of Hon'ble Governor could not confirm existence of such gift deed.

9. As regards existence of the community hall the Deputy Collector Land Reforms has found that co-villager and even purchase refer a kind of old incomplete construction standing towards southern part of the disputed land referred as community hall and the sale deed of petitioner no.1 also refers the community hall in the boundary of her land. Case of the petitioners is therefore very specific on this point that the petitioner no.1 and her sons are claiming their right, title and possession over the land purchased by petitioner no.1 by a registered sale deed from the grandson and great grandson of late Deep Narayan Singh which is not the land on which any construction is made, the name of the petitioner no.1 has been mutated, Jamabandi has been created and rent receipts have been issued in her favour. Therefore, by no stretch of imagination one can allege an act of cheating on the part of these petitioners. It may be at best a case of civil dispute, but not even a prima facie case under Section 420 of the



Indian Penal Code is made out against the petitioners.

10. It is further submission of the learned counsel for the petitioners that the learned Magistrate while taking cognizance of the offences did not believe the allegations of abuse, beating or firing by pistol, hence no cognizance was taken by the learned Magistrate for those allegations mentioned in the complaint petition. The learned Magistrate has taken cognizance under Section 379 of the Indian Penal Code without appreciating that the allegations against the petitioner no.1 who is a lady and 71 years old and her brother that they took out a sum of Rs.500/- from the pocket of the complainant and watch from his hand respectively was a mere superimposition and out and out false allegation just to give this otherwise a purely civil dispute a criminal colour. Further submission is that once the allegations of abuse, cheating and firing by accused nos.5, 6 and 7 (petitioner nos.2, 3 and 4) were not believed by the learned Magistrate and no prima facie evidence could be found in that respect, the case of false implication of these petitioners are further strengthened and clearly evident. There is no allegation at all against petitioner nos.2, 3, 4, 5 and 6 of committing any act of cheating. No allegation of theft is there against accused nos.2, 3, 4 and 5, still in a routine and mechanical manner prima-facie view of a case under Sections 420 and 379 of the Indian Penal Code has been taken by learned Magistrate,



thus the same is bad in law and hence liable to be set-aside.

11. On the other hand, learned counsel representing the opposite party no.2 has opposed the application and submitted that in facts and circumstances of the case the learned Magistrate has rightly taken cognizance of the offences under Sections 420 and 379 of the Indian Penal Code and issued summons against these petitioners. Learned counsel submits that the sale deed in question has been executed by the accused nos.1 and 2 in connivance with respect to the land on which community hall was constructed. It is his submission that that the Deputy Collector Land Reforms has vide Annexure-5 accepted the certificate of Bhudan Yagna Committee saying that Amrit Jha and others had donated the land to Bhudan Yagna Committee.

12. Learned counsel for the petitioners immediately submits that the Circle Officer, Sangrampur has categorically doubted the certificate issued by an Officer of the Bhudan Yagna Committee because the donor Amrit Jha and others who allegedly executed the deed of gift in respect of the land in question had no connection with the family of Khatiyani Raiyat. He further submits that even gift deed claimed by Bhudan Yagna Committee has not been produced. By filing a supplementary affidavit he has brought on record the order-sheets of the court of Divisional Commissioner, Munger showing that



the order of the Deputy Collector Land Reforms has been challenged to that extent in the appeal which is still pending and the status quo order has been passed.

13. I have perused the materials available on the record and considered the submissions made at the bar. A perusal of the complaint petition and the deposition of the witnesses clearly demonstrate that very genesis of this case is the land in respect of which accused nos.1 and 2 executed a sale deed in favour of the petitioner no.1 on 05.11.2003. The order passed by the Circle Officer (Annexure-4) as well as the order passed by the Deputy Collector Land Reforsm, Munger (Annexure-5) are consistent at least on two points i.e. (i) the sale deed has been executed by accused nos. 1 and 2 in favour of petitioner no.1 in respect of a land which is recorded in the name of their common ancestor Durga Singh who is the Khatiyani Raiyat and, (ii) after execution of the sale deed in favour of petitioner no.1 her name was mutated, Jamabandi was created in her name and rent receipts have been issued in favour of the petitioner no.1.

14. It has further come in the order passed by the Circle Officer and the Deputy Collector Land Reforms (Annexure-4 and 5 to the present application respectively) that enquiry on the existence of any deed of gift executed allegedly by Deep Narayan Singh, son of Durga Singh in favour of Hon'ble Governor of Bihar for construction



of a community hall has not shown the claim correct. There is no document on record in the Registry Office of Munger showing such donation of that piece of land. This fact is further evident from the official letter written by the District Sub-Registrar in response to the query made by the Deputy Collector Land Reforms, Tarapur, Munger which is evident from Annexure-6 to the present application. It has also come in the order of the Circle Officer, Sangrampur that in the year 1992 on application of Sri Sahdeo Prasad Singh and Gangadhar Prasad Singh both sons of late Deep Narayan Singh for measurement of land the then Circle Officer vide his order dated 05.09.1992 had called for a report from Amin, but neither the order dated 05.09.1992 nor the report of the Amin anywhere mentions about the existence of a community hall. At this stage, this Court would refer the provision of Section 420 of the Indian Penal Code to find out whether the ingredients of the complaint petition would even prima facie satisfy this Court with a case under the said provision. Section 420 of the Indian Penal Code is quoted hereunder for a ready reference:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

15. In the facts of the present case and the discussions



made hereinabove, this Court comes to a conclusion that the nature of dispute in the present case as regards execution of sale deed of the land on which allegedly community hall was existing is pure civil dispute and by no stretch of imagination even prima facie case under Section 420 of the Indian Penal Code could be made out. The findings arrived at by both the authorities above referred clearly show that there is no evidence of execution of a gift of deed in respect of the said land in favour of Hon'ble Governor and, therefore, it cannot be alleged that by purchasing the land in question from accused nos.1 and 2, the petitioner no.1 has committed an act of cheating. There is no case either by the State of Bihar or its authorities that the petitioner no.1 has got sale deed in respect of a government land rather both the revenue authorities have found that Jamabandi of this land has been created in favour of petitioner no.1 and rent receipts have been issued in her name. The only document i.e. a letter of Bhudan Committee certifying that entire 83 decimals land of this khata by two persons who are not from the family of Khatiyani Raiyat is seriously disputed and Appeal in this connection is pending presently. This being the position, the cognizance under Section 420 of the Indian Penal Code is not even sustainable against the petitioner no.1. So far as petitioner nos.2 to 5 are concerned, they are sons of petitioner no.1 and petitioner no.6 is the brother of petitioner no.1, there is no allegation



at all against them of committing any act of cheating. In no case offence under Section 420 of the Indian Penal Code may be alleged against the petitioner nos. 2 to 6.

16. The Hon'ble Supreme Court has taken note of the fact that sometimes there is a tendency to convert civil dispute in a criminal proceeding by giving it a criminal colour. In the case of **Indra Mohan Goswami &Anr. Vs. State of Uttaranchal & Ors. reported in 2007(12) SCC 1** the Hon'ble Supreme Court has recorded in paragraph 23 and 24 as under :-

“23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

17. Learned counsel for the petitioners has rightly pointed out that in the complaint petition there were false allegations



and, therefore, the question of abuse, cheating and firing in the sky could not be believed by the learned Magistrate as no prima-facie evidence could be brought by the complainant to satisfy the learned Magistrate. The allegation of abuse and cheating was made against the accused nos.5, 6 and 7 (petitioner nos.2, 3 and 4 respectively) which was not believed. There is no any allegation against these three petitioners but even then the learned Magistrate could not apply his judicious mind and took cognizance against all the accused including the accused nos.5, 6 and 7 under Section 420 and Section 379 of the Indian Penal Code. If there is not even an allegation constituting such offences against these petitioners, in the opinion of this Court, the order taking cognizance and issuance of summons against them would definitely be bad on this ground alone. Now coming to the allegations made against petitioner no.1 and her brother (petitioner no.6) that they took out Rs.500/- from the pocket of the complainant and a watch from his hand which apparent superimposition and ornamental allegations against the petitioner nos.1 and 6. The petitioner no.1 is said to be a seventy years old lady in the year 2014 when the present quashing application was filed. The allegation against the petitioner no.1 and petitioner no.6 are simply not believable as this Court is of the opinion that the complainant alleged this concocted story of taking out Rs.500/- and the watch just to implicate them in the present case.



This view of the Court is strengthened from the facts that the complainant made allegations of abuse, cheating and firing by other co-accused which have already been disbelieved by the learned Magistrate by not taking cognizance of those alleged offences. This Court is not willing to accept the submissions of learned counsel representing the opposite party no.2 because in ultimate analysis the Court comes to a conclusion that the learned Magistrate has acted in a routine and mechanical manner in taking cognizance of the offences under Sections 379 and 420 of the Indian Penal Code against all the accused and issued summons against them. The Court has already dealt with the reasons for not finding it a prima facie case under Sections 379 and 420 of the Indian Penal Code. In the opinion of this Court there is no prima-facie case under Sections 420 and 379 of the Indian Penal Code against any of these petitioners.

18. In result, the impugned order taking cognizance and issuance of summons against the petitioners is hereby set aside and the application is allowed.

19. Let it be made clear that the observations of this Court hereinabove for the purpose of the present case shall not be used to the prejudice of either party in the civil dispute.

Cr.Misc.No.32377 of 2014

These two petitioners are father and son respectively



who have executed the sale deed in question in favour of Nirmala Devi (petitioner no.1 in Cr.Misc.No.31869 of 2014). This Court has already discussed in detail the facts and circumstances, the reasons for which this Court has come to a conclusion that the dispute in the present case is at best in the nature of a civil dispute equally applies in the case of these petitioners. In the complaint petition, there is no other allegation against these two petitioners save and except that for the reasons of executing the sale deed in favour of Nirmala Devi they were brought within the purview of this complaint. It is difficult to understand how the learned Magistrate could take cognizance not only under Section 420 of the Indian Penal Code, but even under Section 379 of the Indian Penal Code and issued summons to these petitioners saying that a prima facie case has been made out against the accused persons. There is no allegation of committing any act by these petitioners which may attract Section 379 of the Indian Penal Code. Case under Section 420 of the Indian Penal Code is not even prima-facie made out against them as they happen to be the legal heirs of Khatiyani Raiyat. They claim their right and title in respect of the land in question on the basis of their common ancestors being owner of the land. It is at best a case of civil dispute. In the opinion of this Court, the learned Magistrate has passed the impugned order in a routine and mechanical manner as has been held in Cr.Misc.No.31869 of 2014.



The impugned order is, therefore, set aside in respect of both the petitioners in this case and the application is allowed.

(Rajeev Ranjan Prasad, J)

Arvind/-

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